

CALIFORNIA STATE PERSONNEL BOARD

Date of Issue: November 24, 1993

MEMO TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: Minimum Requirements in Class Specifications

The purpose of this memorandum is to inform State agencies that State Personnel Board staff is reviewing all classification proposals for driver's license requirements, physical requirements or language in the Knowledges, Skills and Abilities (KSA) that focus on the manner in which a function is performed rather than its intended result. The purpose of the review is to ensure that such requirements are in compliance with the Americans with Disabilities Act (ADA) of 1990. Our review extends to existing requirements not proposed to be changed as part of a classification action.

The Personnel Management Policies and Procedures (PMPP) manual already provides guidance to State agencies about when it is appropriate to include requirements such as a driver's license in class specifications. The PMPP requires departments to determine that the proposed minimum qualifications are job related. Such qualifications should be based on a job analysis which may be part of a validation study.

Section 101 of the PMPP instructs State agencies to omit characteristics from class specifications that are already covered in the general qualifications required of all State civil service employees. For example, with regard to driving these general qualifications state:

"...Where the position requires the driving of an automobile, the employee must have a valid state driver's license, a good driving record and is expected to drive the car safely. The foregoing general qualifications shall be deemed to be a part of the personal characteristics of the minimum qualifications of each class specification and need not be specifically set forth therein." (2 CCR 172)

Current regulations and guidance to State agencies also explain the consequences of including inappropriate requirements in class specifications. For example, a driver's license requirement that is not job related can screen out otherwise qualified applicants and can result in employees inappropriately losing their jobs.

If possession of a driver's license appears as one of the minimum qualifications for a class, it is also considered a specified requirement for continued employment. Where possession of a driver's license is a minimum qualification for a class, departments have the authority to non-punitively terminate employees who lose their driver's license. An employee who has been non-punitively terminated may reinstate if the driver's

license is restored, but reinstatement is permissive with the appointing authority. There is no mandatory return right.

A driver's license requirement may serve to exclude a person from employment on the basis of disability if the disability prevents that individual from obtaining a driver's license. If such a requirement were challenged under the ADA, the employer would have to show that possession of a driver's license is a job related minimum qualification. In order to be considered a job related minimum qualification for a class, a driver's license must be required for every position in the class.

Under the ADA (1), the employer must also show that possession of a driver's license is required to perform an essential function of the job. This means that either:

1. the position exists to perform the function, or
2. there are a limited number of other employees available to perform the function or among whom the function can be distributed, or
3. the function is highly specialized, and the person in the position is hired for special expertise or ability to perform it.

Evidence that a function is essential includes, but is not limited to:

1. the employer's judgement
2. a written job description
3. the amount of time spent performing the function
4. the consequences of not requiring a person in this job to perform the function

(1) The following points are taken from A TECHNICAL ASSISTANCE MANUAL ON THE EMPLOYMENT PROVISIONS (TITLE I) OF THE AMERICANS WITH DISABILITIES ACT Chapter II, pages 13-17.

5. the terms of a collective bargaining agreement
6. work experience of current and former employees in the job

Classification proposals that include possession of a driver's license as a minimum qualification must include information that makes the case for the requirement being job related. This must include the employer's judgement that a driver's license is required to perform the duties of every position in the classification. The employer's judgement should be supported by evidence such as that described above. In addition, the class specification should describe the essential driving functions of the positions in the class.

Even though a classification proposal may not include any changes to the minimum qualifications already in a classification, we are routinely reviewing proposed classification actions for existing driver's license requirements to make sure they are appropriate before recommending that our Board act on the classification proposal.

Our review also extends to language in the KSA section that focuses on the manner in which a function is performed rather than its purpose or result. For example, if the job requires an incumbent to "communicate effectively", it is usually sufficient to indicate that desired result without tagging on the words "orally and in writing" which specify the manner in which communication is to occur.

Similarly, when reviewing classification proposals, we examine any existing physical requirements in the specification to determine whether they could serve to discriminate against a disabled individual as defined by the ADA.

For example, the term "normal hearing" has a relatively precise meaning (2) to a physician and could, in fact, be interpreted as setting an absolute standard. Consequently, a requirement for "normal hearing" might lead to the automatic rejection of an applicant with a disability as defined by the ADA without the benefit of an analysis of whether the individual involved could perform the essential functions of the job. Therefore, such a requirement generally needs to be supported by a validation study.

(2) The ability to hear at 25 decibels of loudness at frequencies of 500, 1000, 2000, 3000, and 4000 cycles per second using pure tone audiometry is generally considered "normal".

On the other hand, if the nature of the job strongly indicates the need for an ability such as hearing, the requirement may be stated in a way that will lead to individual assessment of a disabled applicant's ability and consideration of reasonable accommodation. For example, a statement such as "hearing sufficient to perform the essential functions of the job" should lead to an individual evaluation of the disabled applicant's hearing as it relates to the essential functions(s) he will be required to perform. It also should result in consideration of whether accommodation of a disabled person with a hearing deficiency is reasonable. Since such language does not imply an absolute standard, a validation study may not be necessary to defend the requirement.

While hearing has been used as an example to illustrate these points, the phrase, ". . . sufficient to perform the essential functions of the job" also may be attached to other job related requirements which might adversely affect a disabled applicant.

However, if a department in evaluating applicants under such a requirement applies an absolute standard which would automatically exclude from consideration a qualified disabled applicant as defined by the ADA, the department must be able to demonstrate, if challenged, the job relatedness and business necessity of that exclusionary standard. That typically means pointing to a validation study as support for the exclusionary standard.

Therefore, even though a minor specification revision is proposed, departments should be reviewing the entire specification and removing inappropriate requirements in order to expedite action by our Board and ensure that they are in compliance with the ADA. In the long run, this can save State agencies considerable aggravation and, potentially, much expense.

Questions about this memorandum should be directed to Lynne Graeber, (916) 654-6157, CALNET 464-6157, or TDD (916) 653-1511.

/s/
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